



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 32495743

Date: AUG. 15, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a taekwondo instructor, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirement for this classification through evidence of either a major, internationally recognized award or that he meets at least three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that their achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that the term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” A petitioner can demonstrate that they meet the initial evidence requirements for this immigrant visa classification through evidence of a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that meets at least three of the ten listed criteria, which call for evidence about lesser awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the individual possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is a taekwondo athlete, referee, and instructor who has received several medals as a competitor in tournaments since 2009. He intends to continue working as a referee and instructor in the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director concluded that the Petitioner met one of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(iv), relating to his participation as a judge of the work of others in his field. We agree with the Director’s determination for this criterion. On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to lesser nationally and internationally recognized awards, membership in associations requiring outstanding achievement, and published material about him and his work in the field. After reviewing all of the evidence in the record, we conclude that he does not meet at least three of the evidentiary criteria.

We note that in his initial filing as well as when responding to the Director’s request for evidence (RFE), the Petitioner described his field of endeavor as taekwondo, while listing his proposed employment as “taekwondo master instructor and school owner” on Form I-140, Immigrant Petition for Alien Workers. Much of the evidence in the record pertains to his career as an athlete, with a comparatively smaller portion evidencing his activities as a taekwondo instructor and a referee. However, competitive athletics and coaching rely on different sets of skills and in general are not in the same area of expertise. *See generally* 6 *USCIS Policy Manual* F.2(A)(2), www.uscis.gov/policy-manual. Where, as in this case, a petitioner has been coaching for an extended period of time, we will place the heaviest weight on evidence relating to their achievements as a coach. *Id.*

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

To meet this criterion, a petitioner must establish that they have received prizes or awards, which were granted for excellence in their field of endeavor, and that the prizes or awards are nationally or internationally recognized in their field of endeavor. Here, the Petitioner submitted certificates, photographs of himself receiving medals at competitions, and letters from the Nepal Olympic Committee and other organizations which demonstrate that he received several gold, silver, and bronze medals as a taekwondo athlete.

The Director concluded in her decision that the record lacked clear pictures of the medals claimed to have been received by the Petitioner, and so was insufficient to verify that he actually received them. But the plain language of this criterion calls for documentation of awards received without requiring a particular type of evidence, and in this case the certificates, photographs, and verifying letters from several organizations together are sufficient to show that the Petitioner received the awards he claims.¹

The letters mentioned above describe some of the taekwondo events at which the Petitioner competed. For example, a letter from the K-I-T-C- indicates that he won two gold medals at tournaments organized by this association, and that the tournaments included over 600 and 362 international competitors, respectively, in 2019 and 2020. Although these figures show that those tournaments did not limit the competitors in number or nationality to the extent that the excellence of the competitors was reduced, the fact that competitors from different countries competed at the tournaments does not establish that the awards granted were internationally recognized. The record does not include evidence showing the prestige or importance of these and other tournaments in which the Petitioner medaled within the field of taekwondo, particularly within the framework of top-level international competition, or that the awards granted received attention or recognition within the field at the national or international level. We further note that the Petitioner does not differentiate in his brief between the recognition afforded to awards he received at locally organized tournaments versus those from tournaments organized by or between national associations.

In his appeal brief, the Petitioner references a letter from the dojang in Nepal where he worked as an instructor which states that the students trained by the Petitioner “won the most gold medals and silver medals among other school competitors.” However, this criterion requires evidence of the Petitioner’s receipt of prizes or awards, not those he instructed, and the evidence does not indicate that he was awarded for the success of his students.

For all of the reasons discussed above, we conclude that the Petitioner has not demonstrated that he meets this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii)

¹ The Petitioner also provides clear pictures of his medals with his appeal.

To meet this criterion, a petitioner must establish that they are a member in an association, that the association is in their field of endeavor, that it requires outstanding achievements of its members, and that the requirement for outstanding achievements is judged by recognized national or international experts in their fields.

The Director noted in her decision that the record includes photocopies of several identification cards which show the Petitioner's membership in taekwondo associations, as well as his promotion to the fourth and fifth dan taekwondo levels.² But the Director concluded that the record did not establish that these associations require outstanding achievements of their members.

On appeal, the Petitioner refers to a letter from the Nepal Taekwondo Association (NTA) that his receipt of the fifth dan black belt "is internationally recognized and signifies a high degree of proficiency and expertise." When making a determination under this criterion, we look to evidence of the requirements for the level of a petitioner's membership. *See generally* 6 USCIS Policy Manual F.2(A)(2), www.uscis.gov/policy-manual. Although the Petitioner has established his membership in the NTA, the record does not show that his taekwondo dan is equivalent to his level of membership in that association, especially considering that the dan was awarded by a different association, the World Taekwondo Headquarters (WTH). The record does not sufficiently document the levels of membership in the NTA or the WTH, or the requirements for those levels of membership.

The Petitioner also references a letter from the USA Masters Team which states that he has been a "supporting member" since 2021. While the letter speaks of the Petitioner's activities, qualifications, and personal character, it provides no information regarding the membership requirements for a supporting member.

Per the above, the Petitioner has not established that any of the associations for which he provided evidence of membership require outstanding achievements for his level of membership. He has therefore not established that he meets this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

To meet this criterion, a petitioner must submit evidence of published material that is about them and relates to their work in their field of endeavor. The material must include the title, date, and author information, and must be published in a professional or major trade publication or other major medium. Also, in compliance with the regulation at 8 C.F.R. § 103.2(b)(3), materials in a foreign language must be accompanied by a certified English translation.

² We note that the Petitioner achieved the fifth dan after the filing of his petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), further provides that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. We will therefore not consider this evidence on appeal.

The Petitioner submitted several articles from newspapers and websites based in Nepal, some of which are about him and his career in taekwondo and others which did not mention him or only reported the results of competitions. In her decision, the Director concluded that the submitted evidence did not meet several of the elements of this criterion. Specifically, she noted that articles published in media the Petitioner identified as *Annapurna Post*, *Annapurna National Daily* and www.nepalmala.com did not include the names of the authors, and that the letter from the editor of *Annapurna Post Daily* concerning the circulation of *Annapurna National Daily* was insufficient to establish that it was a qualifying medium under this criterion.

On appeal, the Petitioner does not address the missing author information for any of the published materials submitted. He also does not contest that any of the media in which the articles about him were published are professional or major trade publications or other major media, except for the *Annapurna Post*. The Petitioner first refers to the editor's letter noted above, but we note that there are inconsistencies regarding which media are referred to in that letter. The editor begins the letter by stating that he writes on behalf of the *Annapurna National Daily*, a newspaper which he states has a daily circulation of 225,000. He then goes on to list five articles which he states appeared in the newspaper, all in 2022. But two of these are described by the Petitioner as having been published in the *Annapurna Post*, and in four of the articles the website address www.annapurnapost.com appears in the page header. Further, the writer of the letter lists his title below his signature as Chief Editor, *Annapurna Post Daily*, which appears to be an amalgam of the names of the two newspapers. The Petitioner must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As neither the editor's letter nor the Petitioner explains any relationship between these two newspapers, it is not apparent to which of them the circulation figures stated by the editor apply.

In addition, the Director concluded that the circulation figures alone were insufficient to establish that the newspapers qualified as major media. On appeal, the Petitioner submits new evidence from www.wikipedia.org about the *Annapurna Post*. Where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The Petitioner was notified of the types of evidence which could be submitted in support of this criterion in the Director's RFE, and was given the maximum allowable period to respond with additional evidence.

For all of the reasons given above, we conclude that the Petitioner has not established that he meets this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we have reviewed the entire record and conclude that it does not establish that the Petitioner has the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in his field, and that he is one of the small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.